

General Information Letter: Section 502 of the Illinois Income Tax Act provides the requirements for filing of returns by individuals.

June 30, 1999

Dear:

This is in response to your letter dated April 15, 1999 in which you state the following:

I am xxxxxxxxxxxxxxxxx, social security number xxxxxxxxxxxx. My wife is xxxxxxxxxxxxxxxxx, social security number xxxxxxxxxxxx.

I request that you grant us an extension of time for filing until my questions about filing a federal income tax return can be answered, (Please see the enclosed copy of my letter to the IRS.).

I further request that you grant us an extension of time for filing until you can answer the following two questions:

1. How can we file an Illinois state income tax return without waving out rights against self incrimination which are protected by the Fifth Amendment of the Constitution of the United States of America, as well as by Article 1, Section 10 of the state constitution.
2. What state statute, which does not conflict with the above-mentioned rights, makes us liable for the Illinois state income tax?

In the event you can not answer the above two questions, please consider this letter an informal request for refund.

For your reference, I have included copies of the documentation I have sent to the IRS.

Please respond to my two questions within 30 days. If additional time is required, please request it in writing within 30 days.

According to the Illinois Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill.Adm.Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Regarding your first question, the Fifth Amendment states that an American cannot be forced to act as a witness and/or give information about himself/herself for alleged violations of civil or criminal statutes. Merely filing a tax return does not, however, violate an individual's Fifth Amendment rights because a tax form only requests disclosure of routine information that is needed for the

computation of tax liability. This process does not involve an accusatorial setting that extracts a "highly selective group inherently suspect of criminal activities." California v. Byers, 402 U.S. 424, 430 (1971).

The answer to your second question requires more discussion as there are several authorities granting the State of Illinois the right to tax certain individuals. The Illinois Constitution expressly provides for an income tax in Article IV, Section 3. Furthermore, Section 1 of Article IX grants the Illinois General Assembly the power to raise revenue by law. Pursuant to this authority, the General Assembly enacted 35 ILCS 5/101 et. seq., commonly known as the Illinois Income Tax Act ("IITA").

Section 502 of the IITA requires an individual taxpayer to file an Illinois personal income tax return if such individual is: (i) liable for a tax imposed by the IITA, or (ii) required to file a federal income tax return, regardless of whether such person is liable for a tax imposed by the IITA, in the case of an Illinois resident. Failure to file an Illinois individual tax return may result in penalties and interest pursuant to the Uniform Penalty and Interest Act, 35 ILCS 735/3-1 et. seq.

Finally, with respect to your request for an extension, Illinois provides an automatic extension of six months. However, in order to avoid late filing and late-payment penalties, Form IL-505-I should be completed by the April 15 due date with payment of the tentative taxes owed. Interest will also accumulate on any unpaid tax and penalties from the day after the original due date of your return through the date you pay the tax and penalties. Interest is simple interest calculated using a daily rate. Any additional extension beyond the six months can only be obtained if the IRS grants an additional extension.

As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. I hope that the above information has sufficiently answered your questions.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax